

**TRANSCRIBED FROM DIGITAL RECORDING**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

NICHOLAS MARTIN, on behalf of	)	Docket No. 10 C 3494
himself and others similarly	)	
situated,	)	
	)	
Plaintiffs,	)	Chicago, Illinois
	)	November 2, 2011
vs.	)	10:15:52 o'clock a.m.
	)	
CCH, INCORPORATED,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - Status  
BEFORE MAGISTRATE JUDGE MARTIN C. ASHMAN

APPEARANCES:

For the Plaintiffs: BURKE LAW OFFICES LLC  
BY: MR. ALEXANDER HOLMES BURKE  
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Chicago, Illinois 60601

For the Defendant: MCGUIREWOODS LLP  
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**\*\*PLEASE NOTIFY OF CORRECT SPEAKER IDENTIFICATION\*\***  
**NOTE: FAILURE TO STAND NEAR THE MICROPHONE MAKES PORTIONS**  
**UNINTELLIGIBLE AND INAUDIBLE.**

1           (The following digitally recorded proceedings were had in  
2 open court:)

3           COURTROOM DEPUTY: 10 C 3494, Martin versus CCH,  
4 Incorporated.

5           MR. BURKE: Good morning, Judge. Alexander Burke  
6 for the plaintiff.

7           MS. ZIELINSKI: Sarah Zielinski for the defendant.

8           THE COURT: Good morning.

9           MR. BURKE: We've got a big fat motion --

10          THE COURT: We do.

11          MR. BURKE: -- before your Honor. It's a motion for  
12 sanctions and spoliation.

13          THE COURT: Okay. You're ready to argue it?

14          MR. BURKE: I am, your Honor. I think that there  
15 would be some use in filing a reply brief just to put some  
16 stuff in writing.

17          THE COURT: Well, I think there would be some use to  
18 it, too, because frankly the motion itself is either  
19 repetitive or I don't understand it.

20          MR. BURKE: Okay.

21          THE COURT: I'm not sure that I know specifically  
22 what the motion -- has addressed that. There's some general  
23 statements about documents but it doesn't say what, which is  
24 pretty much what the -- pretty much what the response by  
25 saying what are you talking about.

1 MR. BURKE: Okay.

2 THE COURT: So, yeah, give us a reply which  
3 specifically says they didn't give us one, two, three, four,  
4 five, we didn't get this from anybody else, what's the harm.  
5 Address that specifically.

6 MR. BURKE: We'll do that.

7 THE COURT: Okay. How much time do you need?

8 MR. BURKE: How about November 18th, just over two  
9 weeks?

10 THE COURT: Okay. December 18th to file a reply.

11 COURTROOM DEPUTY: Judge, did he say November or  
12 December, counsel?

13 MR. BURKE: November.

14 COURTROOM DEPUTY: Okay.

15 THE COURT: Oh, I'm sorry. November 18th for a  
16 reply and we'll set this for oral argument on November 30 at  
17 11:30.

18 MR. BURKE: Okay.

19 THE COURT: Okay.

20 MR. BURKE: A few other issues. Probably the  
21 easiest is that I filed a motion for leave to file an exhibit  
22 under seal.

23 THE COURT: Yes. Any objection?

24 MS. ZIELINSKI: No, no objection, your Honor.

25 THE COURT: All right. That motion is granted.

1           MR. BURKE: On the 31st, the last day of discovery,  
2 I filed a motion -- I haven't noticed it up yet -- a motion  
3 for -- to extend discovery as to subpoena that we issued to a  
4 third-party continuant in Washington State. Continuant  
5 administers CCH's dialers.

6           They've responded to the subpoena -- well, they  
7 contacted me. We're working through some issues regarding  
8 confidentiality. They want us to pay for various things and  
9 I'm working through it. We don't want to keep discovery open  
10 for other purposes; just for this limited purpose of the  
11 subpoena.

12           MS. ZIELINSKI: Your Honor, we don't oppose  
13 discovery closing except for certain limited purposes. In  
14 addition to them having a subpoena outstanding to continuant,  
15 we also have a subpoena outstanding to the IRS. We've been  
16 working with the IRS, as I think I mentioned the last time we  
17 were here, to get testimony regarding its e-locator database  
18 which is where plaintiff's contact information is located and  
19 regarding whether plaintiff voluntarily agreed to have that  
20 information posted on that website.

21           We have gotten some information from the IRS but  
22 what we're trying to do is put that in a form that would  
23 be -- we'd be able to present to the court, either in a  
24 deposition or in an affidavit. So we would be okay with  
25 allowing discovery to close except for the limited purposes

1 of those subpoenas.

2 THE COURT: All right. So discovery is extended for  
3 how long?

4 MR. BURKE: I would hope that this would be resolved  
5 in 30, 45 days. They're really sort of pushing back as to  
6 these -- the some money issue and confidentiality issue.

7 Your Honor, just so the record -- discovery was  
8 extended over 30 days for the purpose of CCH pursuing this  
9 IRS subpoena last time we were here. The subpoena was issued  
10 in August and I haven't seen any response to anything in  
11 response to the subpoena.

12 THE COURT: Well, they said they're getting  
13 something. We're going to extend discovery for two purposes,  
14 for the purpose of getting responses to a subpoena. Describe  
15 the subpoena.

16 MR. BURKE: Subpoena issued to continuant.

17 THE COURT: Okay. And for the purpose of obtaining  
18 information from the IRS.

19 MR. BURKE: Okay.

20 THE COURT: And we'll extend it to January 13.  
21 We'll set this matter for a status on January 25 at 10:00  
22 o'clock.

23 MS. ZIELINSKI: And, your Honor, we do have one  
24 other motion up today.

25 THE COURT: Pardon?

1 MS. ZIELINSKI: We do have one other motion up today  
2 with your Honor.

3 THE COURT: Okay. What is that?

4 MR. BURKE: And one more -- and it's all  
5 inter-connected. And one more request. I'll do the request  
6 first because I don't think there's any dispute among the  
7 parties.

8 The parties yesterday began the preliminary process  
9 of talking class settlement and the plaintiff has a --  
10 cooperative effort to figure out if we can make a class  
11 settlement so both parties are on board here. And the  
12 plaintiff is to make his expert disclosures for class  
13 certification in two weeks.

14 We are just at the brink of having to incur  
15 significant costs to make that disclosure and we discussed  
16 this yesterday and CCH would not oppose putting that -- the  
17 expert disclosure deadlines off 30 days for class  
18 certification.

19 THE COURT: All right. You want -- what you want is  
20 expert disclosure extended for 30 days by reason of the fact  
21 that you're beginning to talk settlement --

22 MR. BURKE: Yes.

23 THE COURT: -- is that about it?

24 MR. BURKE: Yes.

25 THE COURT: Okay. That motion is granted.

1 MR. BURKE: Great.

2 MS. ZIELINSKI: Thank you, your Honor.

3 THE COURT: Now that will be extended to -- we'll  
4 extend it to -- what date did I just give you for an  
5 extension?

6 MR. BURKE: January 13th.

7 THE COURT: January 13th.

8 MR. BURKE: So that -- maybe it would make sense to  
9 have --

10 THE COURT: That gives you plenty of time.

11 MR. BURKE: For the plaintiff's disclosure?

12 THE COURT: For -- well, you want 30 days for each  
13 side?

14 MR. BURKE: Yeah. Of course everything would have  
15 to be pushed.

16 THE COURT: All right. For the plaintiff, January  
17 13th. For the defendant, February 13th.

18 MR. BURKE: Okay.

19 THE COURT: Let's see if that's a real date.  
20 February 13 is not Friday the 13th so it's okay.

21 MS. ZIELINSKI: And then the last issue up today,  
22 your Honor, also does relate to this -- the discovery and so  
23 this would be another thing that if you grant this motion,  
24 we'd like discovery to stay open for as well and that is a  
25 motion to compel that CCH filed last Friday to compel

1 plaintiff to request a copy of his application to the IRS to  
2 become an authorized e-file provider.

3 THE COURT: Yes. Is there any objection to that?

4 MR. BURKE: I mean, we've produced the documents  
5 that we have relating to this. It's three pages that the  
6 plaintiff preserved.

7 THE COURT: They want the IRS application. You  
8 don't have it. They want an authorization, they get it.  
9 What's the objection?

10 MR. BURKE: Well, I'm not too sure they're asking  
11 for an authorization to get it. I think -- my understanding  
12 was that they're asking us to demand like through a subpoena  
13 or some other process from the IRS to get it.

14 MS. ZIELINSKI: No, your Honor. We've been working  
15 with the IRS in an attempt to get this information ourselves  
16 and the IRS has already shown us sample forms showing that  
17 the plaintiff would have had to check this box on his  
18 application consenting to be included in this database which  
19 is contrary exactly to the deposition.

20 THE COURT: Well, but if you get an authorization  
21 from your opponent and give it to the IRS, will you get the  
22 information?

23 MS. ZIELINSKI: That may be possible. What -- the  
24 information I've gotten from them is that they cannot give it  
25 to us directly but if the plaintiff requested it himself



1 directly. So it may be that we can get it if we have  
2 permission as well.

3 MR. BURKE: Judge, I don't --

4 THE COURT: It's within your control.

5 MR. BURKE: I'm not sure that control goes so far.  
6 You know, I haven't seen anything from the IRS that says that  
7 if we -- you know, if we produce this -- I mean, if they have  
8 something in writing that says okay, well, this is what we  
9 need from the IRS, you know, we would consider that but I  
10 just don't know what the scope of what they're asking for,  
11 just this application.

12 THE COURT: They're asking for an application form.  
13 How -- what is it, a one-page, two-page form?

14 MS. ZIELINSKI: It's an application that he would  
15 have filled out online so we just need a copy of that form so  
16 I think he can even access it.

17 THE COURT: An application form. There is control.  
18 I disagree with you, there is control. All your client has  
19 to do is sign a paper and get it over to the IRS and  
20 everybody has it so you do have control.

21 MR. BURKE: Okay.

22 THE COURT: That being the case, the order is that  
23 the plaintiff shall execute the appropriate documents to  
24 obtain the application -- what do you call it?

25 MR. BURKE: E-file application.

1 MS. ZIELINSKI: Authorized e-file provider  
2 application.

3 THE COURT: Okay.

4 MS. ZIELINSKI: Thank you.

5 THE COURT: Okay.

6 MS. ZIELINSKI: I believe that was also --

7 MR. BURKE: Let me look at my notes. We have a  
8 couple things that were off. I think we hit them, your  
9 Honor.

10 MS. ZIELINSKI: Okay, your Honor.

11 MR. BURKE: Thank you, Judge.

12 MS. ZIELINSKI: Thank you.

13 THE COURT: You may have one other thing. No,  
14 you've covered -- you've covered everything that I have.

15 MR. BURKE: All right. Thank you.

16 MS. ZIELINSKI: Thank you.

17 THE COURT: Okay.

18 (Which concluded the proceedings in the above-entitled  
19 matter.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a  
transcription of proceedings transcribed from digital  
proceedings held before the Honorable Martin C. Ashman on  
November 2, 2011.

*/s/Laura LaCien*

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Laura LaCien  
Official Court Reporter

November 9, 2011  
Date